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| 10/525,924 | 10/25/2005 | Gianluca Giacomazzi | P/2528-23 | 2834 |

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| EXAMINER | |
|---|---|
| KOCH, GEORGE R | |

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| 1791 | |

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/525,924 | GIACOMAZZI ET AL. | |
| | Examiner | Art Unit | |
| | George R. Koch III | 1791 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Information Disclosure Statement*

1. The information disclosure statement filed 2/25/2005 partially fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document[1]; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

[1] No copy of EP 1097 871 A or DE 201 15 480 U was included with the application.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-4, 6-10, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oldenburg (US 6,428,639) in view of Johnson (US 6,419,782).

As to claim 1, Oldenburg discloses a number of embodiments for a method of labeling a succession of containers (items 12, see, for example, Figure 1 and 2, which show the in line and the rotary embodiments; see also Figures 7, 8 and 17); the method comprising the following steps: identifying a container (item 22) before the container (item 22) is fed along a labeling path (via a container position tracking sensor); feeding each container (2) along the labeling path (either bottle table 32 of Figure 1 or conveyor 50 of Figure 2) through a number of labeling stations (items 36 and 38 in Figure 1 or 2), each for applying a respective label (see Figure 9 for an example in the rotary embodiment) to a container (see Figure 9, item 58) traveling through the labeling station (items 36 or 38); and only activating each labeling station to apply the label to the container traveling through the labeling station if the container falls within the category of containers assigned to the labeling station (in the Oldenburg case, every container is assigned to every labeling station); the method being characterized by the fact that each container is identified only on the basis of the physical features of the container (such as by the bottle present

sensor 25 or bottle/label sensor 308 in the rotary embodiment) or only by processing information from operating machines located upstream from the labeling path; each labeling station (item 36 and 38) being loaded with a same type of pre-printed labels (7) and applying to the relevant containers (2) always the same pre-printed label (7) in a given same position.

Oldenburg does not disclose identifying ***each*** container (item 22) to assign to the container one of a number of possible types before the container is fed along a labeling path; assigning a category of containers (2) to each labeling station (17). In essence, Oldenburg discloses the conventional one label format applicator to containers. While Oldenburg could conceivably handle different containers, an identical labeling operation is performed on each and every container that is recognized by the sensors.

However, Johnson discloses that it is known in labeling of consumer articles to identify (via photoelectric sensor 58 and bar code scanners 20a-20e, although Johnson also suggests an omniscanner and digital cameras as alternatives; see column 5, lines 6-54) each product as one of a number of possible types (in this case, by application height) before the article is fed along a labeling path (the path of conveyor 12), assign a category of articles to each labeling station (Johnson suggests 6 application stations for handling 3 product heights; see column 6, lines 14-50), and only activating each labeling station to apply the label to the articles traveling through the labeling station if the product falls within the category of article assigned to the labeling station (based on the height; see column 5-8), the method being characterized by the fact that each product is identified only on the basis of the physical features (such as the height of the product) of the article only by processing information from operating machines located upstream from the labeling path. Johnson discloses that this "sortation system" permits the handling of

"assorted articles having varying dimensions", and as incorporated into Oldenburg, the containers would be the products.[2] Additionally, the level of skill in the art is very high.[3] Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to have utilized the identification and separate labeling applications of Johnson in order to achieve the ability to handle articles of varying dimensions.

As to claim 2, Johnson as incorporated into Oldenburg teaches that each container (in Johnson's parlance, articles) is identified by feeding the container through a recognition station (bar code scanners 20a-20e, or an omniscanner or digital camera) located upstream from the labeling stations (stations 22a-22f) along the labeling path (direction of conveyor 12 travel) and having at least one sensor (bar code scanners 20a-f) for identifying the container.

As to claim 3, Johnson as incorporated into Oldenburg teaches that each container is identified on the basis of the shape of the container (Johnson teaches sensing based on the height, which is one factor that affects the shape of the object.).

As to claim 4, Johnson as incorporated into Oldenburg teaches each container is identified on the basis of the size of the container (such as the height; see columns 5-8).

As to claim 6, Johnson as incorporated into Oldenburg teaches that each labeling station (17) comprises a respective guide (such as mechanical adjustments to be at a specific elevation; see Figure 4 and column 5, line 55 to column 6, line 13); and a respective labeling device (item

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[2] One can think of containers as used in Oldenburg and products as being equivalent, especially since Johnson is directed towards a wide variety of consumer goods (see column 1, lines 15-47, disclosing that the articles could be books, video cassette *containers*, packaged software, compact disc *containers*.) Alternatively, one could think of them as related species of the same genus (in this case, the genus being consumer products). Regardless, both references are directed towards identical or related arts (among the similarities - both involve conveyor lines, consumer products, initial sensing of the product, and application of labels onto the consumer products)

[3] For example, the person having ordinary skill in the art at the time of the invention would need to have a good knowledge base in both manufacturing lines and in automation and control of those lines, which would require a blend of knowledge from both mechanical engineering, electrical engineering, and computer software programming.

22a-22f), which is moved along the guide to adapt its position as a function of the shape and size of the containers (in this case, based on height) with respect to a conveyor (12) for feeding each container along the labeling path (the direction of the conveyor).

As to claim 7, Oldenburg discloses a machine for labeling a succession of containers (items 12, see, for example, Figure 1 and 2, which show the in line and the rotary embodiments; see also Figures 7, 8 and 17); the machine comprising a conveyor (32 or 50) for feeding each container (58) along a labeling path (see figures 1 or 2), a number of labeling stations (items 36 and 38), each located along the labeling path and for applying a respective label (see Figure 9) to a container (item 58) traveling through the labeling station, and a recognition device (such as container position tracking sensor 25 and container/label position correction sensor 308 for the carousel embodiment, or sensors 60/61/62 and sensors 64/65/66 for the in line embodiment of Figure 8) for identifying each container (58) before the container is fed along the labeling path (Oldenburg can be treated as an apparatus that assigns only one type to every container); each labeling station (item 36 or 38) comprising respective control means (item 150, and the web drive servo motor armature control) for controlling the labeling station (item 36 or 38), and which only activate the respective labeling station to apply the label to the container traveling through the labeling station a container goes by the labeling station; the machine (5) being characterized by the fact that recognition device (either item 25 or 308) is able to identify each container only on the basis of the physical features of the container (such as its presence) or only by processing information from operating machines (such as in the case of the second applicator) located upstream from the labeling path; each labeling station (item 36 or 38) capable of being

loaded with a same type of pre-printed labels and being able to apply to the relevant containers always the same pre-printed label in a given same position.

Oldenburg does not disclose identifying ***each*** container (item 22) to assign to the container one of a number of possible types before the container is fed along a labeling path; assigning a category of containers (2) to each labeling station (17). In essence, Oldenburg discloses the conventional one label format applicator to containers. While Oldenburg could conceivably handle different containers, an identical labeling operation is performed on each and every container that is recognized by the sensors.

However, Johnson discloses that it is known in labeling of consumer articles to identify (via photoelectric sensor 58 and bar code scanners 20a-20e, although Johnson also suggests an omniscanner and digital cameras as alternatives; see column 5, lines 6-54) each product as one of a number of possible types (in this case, by application height) before the article is fed along a labeling path (the path of conveyor 12), assign a category of articles to each labeling station (Johnson suggests 6 application stations for handling 3 product heights; see column 6, lines 14-50), and only activating each labeling station to apply the label to the articles traveling through the labeling station if the product falls within the category of article assigned to the labeling station (based on the height; see column 5-8), the method being characterized by the fact that each product is identified only on the basis of the physical features (such as the height of the product) of the article only by processing information from operating machines located upstream from the labeling path. Johnson discloses that this "sortation system" permits the handling of "assorted articles having varying dimensions", and as incorporated into Oldenburg, the

containers would be the products.[4] Additionally, the level of skill in the art is very high.[5] Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to have utilized the identification and separate labeling applicators of Johnson in order to achieve the ability to handle articles of varying dimensions.

As to claim 8, Johnson as incorporated into Oldenburg teaches that the recognition device (items 20a-20f) comprises a recognition station (see Figures) located upstream from the labeling stations (items 22a-22f) along the labeling path (direction of conveyor 12) and having at least one sensor (bar code scanners 20a-f) for identifying the container.

As to claim 9, Johnson as incorporated into Oldenburg teaches that the sensor (bar code sensors 20a-20f) identifies each container on the basis of the shape of the container (Johnson teaches sensing based on the height, which is one factor that affects the shape of the object.).

As to claim 10, Johnson as incorporated into Oldenburg teaches that the sensor identifies each container on the basis of the size of the container (such as the height; see columns 5-8).

As to claim 12, Oldenburg discloses that the conveyor (rotating table 20) comprises a carousel conveyor (i.e. a rotating table) with a vertical axis (which is the axis of drive shaft 26).[6]

As to claim 13, Johnson as incorporated into Oldenburg teaches that each labeling station (17) comprises a respective guide (such as mechanical adjustments to be at a specific elevation; see Figure 4 and column 5, line 55 to column 6, line 13); and a respective labeling device (item

[4] See Footnote 1 above.
[5] See Footnote 2 above.
[6] Oldenburg also discloses in-line applicators similar to that in Johnson; and a person having ordinary skill in the art would recognize on the basis of Oldenburg that carousel conveyors and in-line conveyors are known equivalents.

22a-22f), which is moved along the guide to adapt its position as a function of the shape and size of the containers (in this case, based on height) with respect to a conveyor (12) for feeding each container along the labeling path (the direction of the conveyor).

6. Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oldenburg and Johnson as applied to claims 1-4, 6-10 and 12-13 above, and further in view of Washelm.

As to claim 5 and 11, Oldenburg and Johnson do not disclose that the containers are identified on the basis of the color of the container, or that the sensor identifies each container on the basis of the color of the container.

However, containers are known to be available in different colors, and often with different labels on them. Additionally, Washeim discloses that it is known to detect bottles by their color, and then use that parameter to determine further processing of the bottles (see the abstract; see also color sensor 5; see also columns 3 and 4). Washeim discloses that the color sensor allows for proper sorting and post-processing of the bottles. Therefore, it would have been obvious for one of ordinary skill in the art at the time of the invention to have utilized a color sensor and/or a step of detecting the containers by color in order to control post processing of the containers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R. Koch III whose telephone number is (571) 272-1230

(TDD only). If the applicant cannot make a direct TDD-to-TDD call, the applicant can communicate by calling the Federal Relay Service at 1-866-377-8642 and giving the operator the above TDD number. The examiner can also be reached by E-mail at george.koch@uspto.gov in accordance with MPEP 502.03. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Philip Tucker can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R. Koch III/
Primary Examiner, Art Unit 1791

3/27/2009